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Anuar bin Abu Bakar v Samsuri bin Booyman

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COURT OF APPEAL (PUTRAJAYA) — APPEAL NO B-02(NCVC)(W)-1926–11 OF 2014
ABANG ISKANDAR, NALLINI PATHMANATHAN AND ZAMANI A RAHIM JJCA
25 JULY 2016

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Contract — Agreement — Joint venture agreement — Validity — Capacity to enter into agreement — Whether all terms stipulated in agreement complied with — Doctrine of estoppel — Whether applicable — Obligation to transfer titles — Whether parties bound by terms of agreement — Contracts Act 1950 s 38

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The plaintiff and the defendant entered into a joint venture agreement ('the JVA') to develop a piece of land ('the land'). The plaintiff was to apply for the change of the conditions of land use and to do the infrastructure works. Since the land belonged to the defendant's mother ('the deceased') the plaintiff agreed to take care of all matters involving the obtaining of the letter of administration and for the faraid process involving the land at the plaintiff's expenses. It was also agreed that upon obtaining a separate title, the plaintiff and the defendant would have equal 50% share over the land (consisting of ten lots of land). The plaintiff's share was to be transferred to him within one month from the date the separate title was obtained. According to the plaintiff, he had complied with all the terms stipulated in the JVA. However, the defendant refused or failed to transfer the plaintiff's share in the land into the plaintiff's name. Therefore, the plaintiff sought a declaration that the defendant was a trustee of the ten lots in the land held on behalf of the plaintiff and for the defendant to transfer the ten lots to the plaintiff. The defendant argued, inter alia, that the JVA was signed before the letter of administration was obtained. It was further argued that the defendant's family members and other beneficiaries had never authorised the defendant to enter into the JVA. The High Court judge ('the judge') ordered the defendant to pay the plaintiff certain sums as compensation. Dissatisfied with the decision, the plaintiff appealed. The primary issue that arose was whether the JVA was valid and binding on the parties.

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Held, allowing the appeal:

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(1) The defendant was, during the signing of the JVA, the administrator of the deceased's estate. As the legal representative of the said estate, the defendant was competent to enter into the JVA with the plaintiff and was bound by the terms contained in the said JVA. The other beneficiaries

had agreed to him entering into the said JVA. Thus, he had their consent. Clearly, the plaintiff had made out the prayer as contained in cl 13(iv) of his statement of claim, which was to seek a declaration that the defendant was a trustee for the plaintiff in relation to the ten lots and that the defendant be ordered to transfer the said ten lots into the name of the plaintiff (see paras 10, 20 & 22).

(2) The JVA was valid and was binding on the contracting parties. The JVA contained certain terms that would require the defendant to do certain things in favour of the plaintiff. Among them was a term that obligated the defendant to transfer ten titles of the newly sub-divided Lot 1971 to the plaintiff. There was no dispute on this term per se. Under s 38 of the Contracts Act 1950, a party to a contract must, unless excused under the Contracts Act or any other law, be bound by the terms of the contract so entered between them. The plaintiff had performed his part of the bargain as contained in the JVA and the defendant had benefited from the efforts undertaken by the plaintiff on behalf of the defendant. The defendant was therefore estopped from denying the plaintiff what had been agreed between them (see paras 24–25 & 27).

(3) The defence of the defendant was an afterthought, devised as it were to deny the plaintiff what was rightfully his, as had been agreed between them as contained in the JVA. The judge had erred in her decision. It therefore required this court's intervention in order that justice was served in the circumstances of this case. The judge's orders were thus set aside (see paras 28 & 30).

[Bahasa Malaysia summary

Plaintif dan defendan telah memasuki perjanjian usahasama ('PUS') untuk membangunkan sebidang tanah ('tanah tersebut'). Plaintif perlu memohon untuk pertukaran syarat penggunaan tanah dan melakukan kerja-kerja infrastruktur. Oleh kerana tanah tersebut dimiliki oleh ibu defendan ('si mati') plaintif bersetuju untuk menjaga semua perkara yang melibatkan surat pentadbiran dan untuk proses faraid yang melibatkan tanah atas perbelanjaan plaintif. Ia juga dipersetujui bahawa setelah memperoleh hak milik berasingan, plaintif dan deefndan akan mempunyai saham 50% yang sama ke atas tanah tersebut (yang terdiri daripada sepuluh lot tanah). Saham plaintif akan dipindahkan kepadanya dalam tempoh satu bulan dari tarikh hak milikberasingan diperoleh. Menurut plaintif, dia telah mematuhi semua terma yang ditetapkan dalam PUS itu. Walau bagaimanapun, defendan enggan atau gagal untuk memindah milik saham plaintif dalam tanah tersebut atas nama plaintif. Oleh itu, plaintif memohon deklarasi bahawa defendan adalah pemegang amanah sepuluh lot dalam tanah yang dipegang bagi pihak laintif dan untuk defendan bagi memindah milik sepuluh lot itu kepada plaintif. Ia selanjutnya dihujahkan bahawa ahli keluarga defendan dan benefisiari lain tidak pernah membenarkan defendan untuk memasuki PUS. Hakim

Mahkamah Tinggi ('hakim tersebut') telah memerintahkan defendan untuk membayar plaintif jumlah tertentu sebagai pampasan. Berasa tidak puas hati dengan keputusan itu, plaintif telah merayu. Isu utama yang timbul adalah sama ada PUS itu sah dan mengikat pihak-pihak.

Diputuskan, membenarkan rayuan:

(1) Defendan adalah, semasa menandatangani PUS itu, pentadbir harta pesaka si mati. Sebagai wakil sah harta pesaka tersebut, defendan adalah kompeten untuk memasuki PUS dengan plaintif dan terikat dengan terma-terma yang terkandung dalam PUS tersebut. Benefisiari lain telah bersetuju dengan kemasukannya dalam PUS tersebut. Oleh itu, dia telah mendapat persetujuan mereka. Adalah jelas, plaintif telah membuat permohonan seperti terkandung dalam fasal 13(iv) penyataan tuntutannya, yang mana adalah untuk memohon deklarasi bahawa defendan adalah pemegang amanah untuk plaintif berkaitan sepuluh lot tanah dan bahawa defendan diperintahkan untuk memindah milik sepuluh lot tersebut atas nama plaintif (lihat perenggan 10, 20 & 22).

(2) PUS adalah sah dan mengikat ke atas pihak-pihak yang berkontrak. PUS mengandungi terma-terma tertentu yang memerlukan defendan melakukan perkara tertentu yang menyebelahi plaintif. Antaranya adalah terma yang mewajibkan defendan memindah 10 hak milik Lot 1971 yang baru dibahagikan kepada plaintif. Tiada pertikaian berhubung terma ini *per se*. Di bawah s 38 Akta Kontrak 1950, satu pihak kepada kontrak perlu, kecuali dikecualikan di bawah Akta Kontrak atau mana-mana undang-undang lain, terikat oleh terma-terma kontrak yang dimasuki antara mereka. Plaintif telah melaksanakan bahagiannya seperti terkandung dalam PUS dan defendan mendapat faedah daripada usaha yang dilakukan oleh plaintif bagi pihak defendan. Defendan dengan itu diestopkan daripada menafikan plaintif tentang apa yang telah dipersetujui antara mereka (lihat perenggan 24–25 & 27).

(3) Pembelaan defendan adalah sutu yang telah difikirkan kemudian, yang direka untuk menafikan plaintif terhadap haknya seperti yang dipersetujui antara mereka yang terkandung dalam PUS tersebut. Hakim terkhilaf dalam keputusan beliau. Oleh itu campur tangan mahkamah ini adalah dikehendaki bagi tujuan keadilan dilaksanakan dalam keadaan kes ini. Perintah hakim dengan itu diketepikan (lihat perenggan 28 & 30).]

Notes

For cases on agreement in general, see 3(3) *Mallal's Digest* paras 3255–3345.

Cases referred to

Cheng Keng Hong v Government of the Federation of Malaya [1966] 2 MLJ 33 (refd)

A *Ganam d/o Rajamany v Somoo s/o Sinniah* [1984] 2 MLJ 290; [1984] 1 CLJ 123, FC (refd)
Kersah La' Usin v Sikin Menan [1966] 2 MLJ 20; [1964] 1 MLRH 528 (refd)
Silimuthu v Amalu & Anor [1983] 1 MLJ 190; [1981] 1 MLRH 509 (refd)

B **Legislation referred to**

Contracts Act 1950 s 38

Appeal from: Civil Suit No 22NCVC-621–10 of 2013 (High Court, Shah Alam)

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Kaliyana Sundaram (Shanker Kaliyana Sundaram with him) (SK Sundaram & Partners) for the appellant.
Mohd Iqbal bin Zainal Abidin (Megat Iqbal & Co) for the respondent.

D **Abang Iskandar JCA (delivering judgment of the court):**

BRIEF FACTS OF THE CASE

E **[1]** It is the plaintiff's pleaded case that on 3 January, 2006, Anuar bin Abu Bakar ('the plaintiff') and Samsuri bin Booyman ('the defendant') entered into a 'Joint Venture Agreement' to develop a piece of land known as Lot 1971, AM 193, Mukim Labu, Sepang District, Selangor ('the land').

F **[2]** Among the terms agreed upon by both parties have been that:

(a) the plaintiff to apply for the change of the conditions of land use from 'Agricultural' to 'Building and Business' in addition to do the infrastructure works;

G (b) since the land belonged to the defendant's mother, Rokiah bt Karia ('the deceased'), the plaintiff agreed to take care all matters involving the obtaining of the letter of administration and for the *faraid* process involving the land at the plaintiff's expenses;

(c) upon obtaining a separate title, the plaintiff and the defendant will have
H equal 50% share over the land (consisting of ten lots in the land);

(d) the plaintiff's share to be transferred to him within one month from the date the separate title is obtained; and

(e) as consideration, the plaintiff will pay to the defendant the sum of
I RM1,000.

[3] The plaintiff contended that he had successfully complied with all the terms stipulated in the joint venture agreement, including obtaining a court order dated 22 August 2007 which, inter alia, ordered that the land be

transferred to the defendant. However the defendant had refused or failed to transfer the plaintiff's share in the land into the plaintiff's name. He had also refused to give to the plaintiff the original title of the land for the purpose of the said transfer.

[4] The plaintiff therefore claimed that the defendant had breached the joint venture agreement. He had also claimed that the defendant had breached the trust as the joint venture agreement which he had entered 'on trust' that the defendant would fulfill his obligations under the joint venture agreement.

[5] Therefore in this suit, the plaintiff sought for a declaration that the defendant was a trustee of the ten lots in the land held on behalf of the plaintiff and for the defendant to transfer the ten lots to the plaintiff within three month form the date of the court order. Alternatively, the plaintiff sought for compensation of RM562,197.50 or RM926,215 whichever applicable with interest.

[6] The defendant in the statement of defence stated, inter alia, that the joint venture agreement was signed before the letter of administration was obtained. It was also his defence that the defendant's family members and other beneficiaries had never authorised the defendant to enter into the joint venture agreement. The defendant contended that there was no consideration in the joint venture agreement. The reason for payment of RM1,000 was also vague. The defendant also contended that the joint venture agreement was not valid because it was contrary to the law of *faraid*, and Shariah law in the distribution of estate.

[7] On 16 October 2014, the learned High Court judge ('the HCJ') ordered the defendant to pay the plaintiff the followings:

(i) the sum of RM48,118.52 for the cost and expenses spent by the plaintiff;

(ii) the sum of RM100,000 as a compensation, (iii) 5% interest upon (i) and (ii); and

(iii) costs of RM20,000.

[8] Dissatisfied with the decision, the plaintiff had since appealed against it to the Court of Appeal. We had heard both parties during oral submissions and we had unanimously allowed the appeal. We now proffer the reasons for our decision.

A THE APPEAL

[9] The plaintiff, in his memorandum of appeal complained as follows:

Hakim Mahkamah Tinggi yang bijaksana telah khilaf di sisi undang-undang dan fakta apabila:

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1. Menyatakan bahawa Perjanjian Usahasama (JOINT VENTURE AGREEMENT) yang ditandatangani di antara Plaintif dan Defendan adalah tidak sah.

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2. Menyatakan bahawa Defendan tidak mempunyai kapasiti sebagai persendirian untuk menandatangani Perjanjian Usahasama tersebut.

3. Menyatakan bahawa Plaintif telah gagal membuktikan bahawa terdapat satu persetujuan lisan di antara Plaintif dan Defendan.

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4. Menyatakan bahawa Defendan adalah bukan merupakan Pemegang Amanah bagi lot- lot tersebut bagi pihak Plaintiff.

5. Telah gagal untuk mengambilkira kandungan perintah Mahkamah bertarikh 22.8.2007 dengan tepat.

6. Telah gagal untuk mematuhi perintah 22.8.2007.

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7. Mencabar dan/atau mengabai perintah 22.8.2007.

8. Merujuk kepada kandungan yang terdapat di permohonan untuk Surat Kuasa Pentadbiran Harta Pusaka.

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9. Mengambilkira kandungan yang terdapat di permohonan untuk Surat Kuasa Pentadbiran Harta Pusaka kerana itu adalah di luar bidang kuasa Hakim.

10. Tidak mengambilkira isu 'Doctrine of Estoppel' yang dibangkitkan oleh Perayu/Plaintiff.

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11. Menyatakan bahawa tuntutan Perayu adalah tidak selaras dan tidak memenuhi peruntukan di bawah Akta Relief Spesifik 1950.

12. Menyatakan bahawa tuntutan Perayu tidak dapat memenuhi peruntukan untuk diberi penghakiman untuk pelaksanaan spesifik kerana perkara ini tidak dinyatakan di dalam perjanjian usahasama.

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13. Menyatakan bahawa perlaksanaan spesifik untuk perjanjian Usahasama tersebut tidak boleh dikuatkuasakan kerana balasan yang akan diterima oleh pihak Defendan adalah tidak mencukupi.

14. Menyatakan bahawa tuntutan Perayu telah gagal berdasarkan seksyen 20 dan seksyen 27 Akta Relief Spesifik 1950.

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15. Berpegang bahawa perayu telah gagal memplidkan tuntutannya dengan jelas bagi perlaksanaan spesifik untuk meneruskan perjanjian atau berdasarkan kemungkiran yang telah dilakukan oleh Defendan kerana Perayu dengan secara jelasnya memplidkan bahawa tuntutanya bagi satu Deklarasi atau secara alternatif untuk gantirugi.

16. Menyatakan bahawa tiada keterangan yang menunjukkan bahawa semua waris-waris kepada estet si mati telah memberi persetujuan kepada Defendan untuk memasukki Perjanjian Usahasama tersebut dengan Perayu.

17. Menyatakan hanya mengewadkan RM48,118.53 sebagai Gantirugi dan RM100,000.00 sebagai wang pampasan.

18. Mengewadkan RM100,000.00 sebagai wang pampasan di mana jumlah RM100,000.00 adalah terlalu kurang berbanding dengan tuntutan Perayu sebanyak RM926,215.00.

19. Dalam semua keadaan kes di dalam menolak tuntutan Perayu terhadap Responden.

[10] As could be seen from the above paragraph, there were numerous grounds enumerated in the memorandum of appeal by the plaintiff. However, during the course of this appeal, the main issue that was ventilated by both parties was centred on the question of whether the joint venture agreement dated 3 January 2006 was valid and therefore binding on the parties. Central on this issue was the defendant's assertion that he had no legal capacity to enter into that agreement. Such assertion by the defendant was premised on fact that the property in Lot 1971 was still in his mother's name — Rokiah bt Karia ie the deceased. Quite related to this issue was that the defendant did not get the consent of the other beneficiaries of the deceased's estate before the defendant entered into an agreement to deal with the estate of the deceased. Upon due perusal of the notes of proceedings in the trial court, it was clear that in his cross-examination, the defendant had answered to a question posed to him that the other beneficiaries had agreed to him entering into the said joint venture agreement, especially with regard to Lot 1971. We reproduce the recording verbatim, like so:

Q: Saya ulang sekali lagi. Semua waris si mati telah bersetuju untuk mengagihkan Lot 1971 kepada Encik Samsuri.

A: Ya

Q: Tolong rujuk JV m/s 1, 2 dan 3. Apakah dokumen ini?

A: Perjanjian Usahasama.

Q: Di bawah perjanjian, apakah lot yang disebut?

A: Lot 1971 PM 193 Mukim Labu.

(See pp 56–57 of *RR Tambahan*).

[11] It was also borne out from the cross-examination of the defendant whereby he had agreed 'untuk memindah milik 50% keseluruhan tanah tersebut kepada En Anuar'. It was also the testimony of the other beneficiaries

to the estate of Rokiah bt Karia that Lot 1971 was earmarked for distribution to the defendant.

[12] It was therefore borne by the evidence that the defendant was indeed competent to enter into the joint venture agreement agreement with the plaintiff in dealing with Lot 1971. Lot 1971 was earmarked for distribution to him from the estate of Rokiah bt Karia. In actual fact, Lot 1971 was subsequently distributed to the defendant as can be seen in his own evidence during cross-examination by learned counsel for the plaintiff at p 59 of the RRT, like so:

> Q: Rujuk m/s 155. Ini adalah satu perintah pembahagian di mana lot 1971 diagihkan atau diserahkan kepada En Samsuri. Betul?
>
> A: 'Ya'.

[13] From the overall appreciation of the evidence led by both litigating parties, it was our view that at the lowest, the defendant was at the material time of signing of the joint venture agreement, the administrator of the deceased's estate. We surmised, that fact was not disputed by the defendant at all. The crux of the defendant's contention was that the ownership of the properties of the deceased, including Lot 1971 had not yet been finalised during the material time and as such, the defendant was not properly and legally clothed to deal with the property the way he did. Premised on that, the defendant had contended that the joint venture agreement was not valid and therefore not binding on him, for want of capacity to contract.

[14] We had considered the submissions on the legal position that ought to obtain in a case such as this. With respect, we agreed with the plaintiff's learned counsel's submission that the defendant was competent to enter into an agreement such as the joint venture agreement. In the case of *Silimuthu v Amalu & Anor* [1983] 1 MLJ 190; [1981] 1 MLRH 509 ('*Silimuthu*'s case') learned justice Rashid J had said at p 510 of the report, as follows:

> It is plain that the defendants relied on their position as bare beneficiaries when they entered into the said agreement to avoid their obligations. Had the plaintiff applied for the specific performance for the transfer of the said land to him I would have to consider whether or not the agreement was binding on the estate. Such deliberation, under the circumstances, may be deferred since it is not an issue in the instant action. I need only consider the question whether the defendants were legally bound to discharge their obligations under agreement to apply for letters of administration and thereafter to apply for permission of the court to sell the said land to the plaintiff.

[15] At this juncture, we can see some parallel with our instant case with regards to the factual matrix thus far. But what the learned justice went on to

say hit the nail on its head. His Lordship had said:

> To my mind, I have no doubt at all that the defendants were legally competent to enter into agreement in the terms as stated above. I do not agree that the agreement was void *ab initio*. There is no proposition of law, to my knowledge, which prohibits beneficiaries of an estate of a deceased person from entering into an agreement of this nature. Instead there are authorities which point to the fact that beneficiaries are competent to enter into such agreement even before letters of administration had been granted to them.

[16] It would be apt for us to advert to the final order that was made by the learned justice Rashid J in the *Silimuthu*'s case like so:

> In my judgement the agreement entered into by the defendants with the plaintiff on July 20, 1980 was valid and the plaintiff was entitled to the court order requiring the defendants to apply for the letters of administration and subsequently to apply for permission of the court to sell the land to the plaintiff in accordance with the said agreement. Accordingly, the defendants were ordered to apply for letters of administration within one month of the date of this judgment and within one month of the grant of the letters of administration, duly extracted, the defendants were required to apply for leave of the court to have the said land transferred to the plaintiff.

[17] See also the decision of Raja Azlan Shah J (as His Majesty then was) in the case of *Kersah La' Usin v Sikin Menan* [1966] 2 MLJ 20; [1964] 1 MLRH 528.

[18] In gist, the defendants in *Silimuthu*'s case were competent to enter into the agreement with the plaintiff, although they were merely beneficiaries, 'even before letters of administration had been granted to them.' As such, they were ordered to discharge their obligations under the agreement to apply for the letters of administration as stipulated in the terms of the said agreement.

[19] So, how did the defendant in our instant appeal, stack up vis a vis the defendants in the *Silimuthu*'s case? In our present case, the defendant was the legal administrator of the deceased's estate of which Lot 1971 was one of the lands comprised therein. That he was a beneficiary to the estate of Rokiah bt Karia was beyond any doubt. Indeed, Lot 1971 was subsequently distributed to him, as evidenced by his answer to that effect at p 59 of the supplementary record of appeal during cross-examination by learned counsel for the plaintiff, like so: 'Q: Rujuk m/s 155. Ini adalah satu perintah pembahagian d mana lot 1971 diagihkan atau diserahkan kepada En Samsuri. Betul?' A: 'Ya'.

[20] As the legal representative of the said estate, the defendant was competent to enter into the joint venture agreement with the plaintiff and was bound by the terms contained in the said joint venture agreement. On top of

that he had the consent of the other beneficiaries. Clearly, the plaintiff had made out the prayer as contained in cl 13(iv) of his statement of claim. The prayer in cl 13(iv) of the statement of claim was not a prayer for specific performance. As such, the prerequisites on pleadings peculiar to such a prayer, as contained in the decision in the case of *Ganam d/o Rajamany v Somoo s/o Sinniah* [1984] 2 MLJ 290; [1984] 1 CLJ 123 did not, with respect, apply to the prayer as contained in cl 13(iv) above stated, which essentially was a prayer for an order that the defendant as the administrator of the estate of the deceased to transfer the said ten lots to the plaintiff. In this case, there was no prayer set out in the statement of claim of the plaintiff seeking for the relief of specific performance. There is a distinction between these two kinds of prayers as could be discerned in the judgment of Rashid J in the *Silimuthu*'s case at p 510.

[21] On that note, we will now address on the issue pertaining to the specific performance as was raised by the defendant. That issue was concerned with the finding by the learned HCJ that the action brought by the plaintiff was based on a prayer for specific performance of the joint venture agreement. It was her finding that since the plaintiff did not plead that he was ready and willing to continue with the agreement, such failure to so plead was fatal per se and that on that ground alone, the claim by the plaintiff must fail.

[22] Now, we had perused through the statement of claim as well as the reply. We could not detect any express prayer for specific performance in the plaintiff's pleadings. So what were the prayers in the statement of claim? The answer could be found in cl 13 therein. It sought for a declaration that the defendant was a trustee for the plaintiff in relation to the ten lots as enumerated therein that had been sub divided from the Lot 1971. It also sought for a declaration that the defendant as administrator of the estate of the deceased be ordered to transfer the said ten lots into the name of the plaintiff within three months of the date of the order granted by the court. Then there were prayers in the alternative, and a prayer for interest at 8%pa from date of judgment till full payment. It ended with an omnibus prayer for any order deemed fit and just in the circumstances by the court.

[23] So, it was clear that the learned HCJ had misread the statement of claim thereby misdirecting herself as to the true nature of the prayers that were being sought for by the plaintiff. She had dismissed the plaintiff's claim based on a mistaken appreciation of the pleadings and prayers of the plaintiff. She had ruled on a prayer, to wit, specific performance, a prayer that was alien to the plaintiff's statement of claim. On that ground alone, being a serious misdirection, her decision was liable to be set aside.

[24] As such, the joint venture agreement was valid and was binding on the contracting parties. That joint venture agreement contained certain terms that

would require the defendant to do certain things in favour of the plaintiff. Among them has been a term that obligated the defendant to transfer ten titles of the newly sub divided Lot 1971 to the plaintiff. In fact, there was no dispute on this term per se. But by disputing the capacity of the defendant to enter into the joint venture agreement with the plaintiff, it was clear to see that if such contention was accepted by the court, as it was accepted by the trial judge, the obligation on the defendant to so transfer the ten lots to the plaintiff would then disappear into thin air just like that. It is also clearly provided under s 38 of the Contracts Act 1950 that a party to a contract must, unless excused under the Contracts Act or any other law, be bound by the terms of the contract so entered between them.

[25] From the evidence adduced in court before the learned trial judge, it was admitted by the defendant during cross-examination by counsel for the plaintiff that the plaintiff had indeed performed his part of the bargain as contained in the joint venture agreement and that the defendant had benefitted from the efforts undertaken by the plaintiff on behalf of the defendant. We reproduce here the relevant portion of the defendant's evidence during cross-examination:

Q: Jadi encik telah bersetuju untuk memindah milik 50% keseluruhan tanah tersebut kepada En Anuar. Betul?

A: Betul.

Q: Bila kena buat?

A: Satu bulan selepas geran tersebut dipindah milik.

Q: Adakah En Samsuri telah pindah milik kepada En Anuar?

A: Tidak.

(Refer to p 57 of supplementary record of appeal)

[26] At p 61 of the supplementary record of appeal, the defendant testified that:

Q: Bayaran ini semua dibuat oleh En Anuar. Betul?

A: Betul.

Q: Selepas semua bayaran dibuat, adakah Pej Tanah mengeluarkan hakmilik berasingan?

A: Ada.

Q: Berapa hak milik berasingan?

A: 17.

Q: Setujukah En Anuar telah menyelesaikan semua kerja-kerja urusan tanah Lot 1971?

A: Setuju.

Q: Selepas En Anuar menyelesaikan semua kerja-kerja berkenaan dengan JV dan Lot 1971, En Samsuri gagal membayar 50% seperti dipersetujui. Betul?

A: Betul.

[27] In light of those admitted facts, we agreed with learned counsel for the plaintiff that the defendant was estopped from denying the plaintiff what had been agreed between them. The doctrine of estoppel operated against him. The doctrine of estoppel also operated against him such that he could not be heard now to say that he had no capacity/authority to enter into the joint venture agreement. A short revisit to the decision by Raja Azlan J (as His Majesty then was) in the case of *Cheng Keng Hong v Government of the Federation of Malaya* [1966] 2 MLJ 33 will illustrate the point in issue, where the learned judge had said:

> Although Mr Hewish had no authority to sign the letter for the Chief Architect, the respondents had by their conduct represented or permitted to be represented to the applicant that Mr Hewish had the authority to act on their behalf and consequently the respondents were bound by their acts to the same extent as if he had the authority therefore in the circumstances the respondents were estopped from disputing the authority of Mr Hewish;

[28] In the overall scheme of things, it did not come as a surprise to us that the plaintiff had described the defence of the defendant as an afterthought; devised as it were, to deny him what was rightfully his, as had been agreed between them as contained in the joint venture agreement.

[29] So, at the end of the day, the learned trial judge had given the plaintiff damages for work actually done as admitted by the defendant. She had also given compensation in the sum of RM100,000 to the defendant and costs. We were of the considered view that her decision could not be sustained in view of the evidence before her.

[30] In the upshot, having perused the records of appeal and the submissions both oral and written by both learned counsel, we were of the considered view that the learned HCJ had erred in her decision. It therefore required our intervention in order that justice was served in the circumstances of this case. We set aside her orders and we granted *prayer 13(iv)* only in the statement of claim. We also ordered costs of RM10,000 to be paid to the plaintiff by the defendant and that the deposit be refunded to the plaintiff.

Appeal allowed.

Reported by Afiq Mohamad